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Attorneys for Plaintiff SWITCH, LTD.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SWITCH, LTD. a Nevada limited liability
company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY; and
DOES 1 through 10; ROE ENTITIES 11 through
20, inclusive,

Defendants.

Case No.: 2:17-cv-02651-GMN-VCF

**PLAINTIFF'S UNOPPOSED MOTION
TO EXTEND TIME TO FILE
OPPOSITION TO DEFENDANTS'
MOTION FOR TEMPORARY STAY
OF DISCOVERY**

Plaintiff Switch, Ltd. ("Switch"), hereby files an unopposed motion to extend the deadline to file its opposition to Defendants' Motion for a Temporary Stay of Discovery (ECF No. 22) ("Motion to Stay") from May 29, 2018 to June 4, 2018. This Motion is brought under Fed.R.Civ.P. 6(b) and is supported by the attached declaration of F. Christopher Austin and the following Memorandum of Points and Authorities.

I. BACKGROUND

Defendants filed their Motion to Stay on May 15, 2018, making the opposition due on May 29th. The deadline, however, was calendared one day later on May 30th due to an error in not including Memorial Day in the calculation. Plaintiff seeks an extension to June 4, 2018, in

1 order to consult with counsel on the content of the opposition. As set forth in the Declaration of
 2 Mr. Austin and email correspondence from opposing counsel, Defendants do not oppose this
 3 request. (*See* Austin Decl. attached as Exhibit 1; *see also* email correspondence with R. Green,
 4 counsel for Defendants, attached as Exhibit 2.)

5 **II. LEGAL ARGUMENT**

6 Rule 6(b) permits the Court to extend the time to file an opposition upon a showing of
 7 good cause and excusable neglect. Fed.R.Civ.P. 6(b)(1)(B).

8 “‘Good cause’ is a non-rigorous standard that has been construed broadly across
 9 procedural and statutory contexts.” *Id.* citing *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253,
 10 1259 (9th Cir. 2010) (discussing “good cause” in the context of Fed. R. Civ. P. 6(b)(1)). It
 11 generally involves a case-by-case assessment of whether there is some good reason for the delay
 12 or requested extension in the absence of bad faith and prejudice to the non-moving party. *See id.*
 13 at 1109-1110.

14 In assessing “excusable neglect,” “courts must apply a four-factor equitable test,
 15 examining: (1) the danger of prejudice to the opposing party; (2) the length of delay and its
 16 potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant
 17 acted in good faith.” *Sandy v. Sunmoon Freight, Inc.*, 714 Fed. Appx. 678, 681, (9th Cir., 2017)
 18 (*citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct.
 19 1489, 123 L. Ed. 2d 74 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir.
 20 1997)).

21 The Ninth Circuit has previously held that docketing errors can be a basis for excusable
 22 neglect. *M.D. v. Newport-Mesa Unified Sch. Dist.*, 2016 U.S. App. LEXIS 21261, *8, citing *e.g.*,
 23 *Pincay v. Andrews*, 389 F.3d 853, 855, 858-60 (9th Cir. 2004) (en banc) (affirming the district
 24 court’s finding of excusable neglect where a sophisticated law firm made a calendaring error
 25 based on a paralegal’s misreading of FRAP 4.). “[E]xcusable neglect under the federal rules ‘is
 26 a somewhat elastic concept and is not limited strictly to omissions caused by circumstances
 27 beyond the control of the movant’” and that extensions are permitted “even when counsel makes
 28

1 an unreasonable mistake.” *Phillips v. Gilman (In re Gilman)*, 887 F.3d 956, 963-964, 2018, citing
 2 *Pioneer Inv. Servs. Co.*, 507 U.S. at 394, 113 S. Ct. 1489. This is because, the overriding policy
 3 is that cases be resolved on their merits where doing so will not prejudice the opposing party or
 4 negatively impact the proceedings. *Id.* (“Moreover, we prefer to resolve cases on the merits”),
 5 referencing *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091
 6 (9th Cir. 2010).

7 As applied to Plaintiff, the relevant circumstances weigh in favor of granting the requested
 8 extension. Defendants do not oppose the requested extension, so there is no danger of prejudice
 9 to the opposing party (factor 1). The requested extension is short, only four judicial days, and will
 10 have no impact on the proceedings (factor 2). The docketing error should have been avoided,
 11 reviewed, caught and corrected, but given the circumstances, the one-day error is understandable
 12 (factor 3) and not the result of bad faith or ill intent (factor 4). The same is also true under the
 13 less rigorous “good cause” standard. To the extent that an assessment of good cause is also an
 14 assessment of whether there is some good reason for the delay or requested extension in the
 15 absence of bad faith and prejudice to the non-moving party, *see Ahanchian*, 624 F.3d at 1259,
 16 these factors are shown by the foregoing discussion.

17 **III. CONCLUSION**

18 For the reasons set forth herein, Plaintiff respectfully requests the Court grant its
 19 unopposed motion for 6-day extension to Monday June 4, 2018, to file an opposition to
 20 Defendants’ Motion to Stay (ECF No. 22).

21 Dated: May 30, 2018.

22 Respectfully Submitted,

23 /s/ F. Christopher Austin
 24 F. Christopher Austin (NV Bar No. 6559)
caustin@weidemiller.com
WEIDE & MILLER. LTD.
 10655 Park Run Drive, Suite 100
 Las Vegas, NV 89144
 Tel: 702-382-4804
 Fax: 702-382-4805

27 *Attorneys for Plaintiff Switch, Ltd.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WEIDE & MILLER, LTD. and that on May 30, 2018, I served a full, true and correct copy of the foregoing **UNOPPOSED MOTION TO EXTEND TIME TO FILE OPPOSITION TO DEFENDANTS' MOTION FOR TEMPORARY STAY OF DISCOVERY** via CM-ECF to the addressees listed below:

Marc J. Randazza, Esq.
Ronald D. Green, Esq.
Alex J. Shepard, Esq.
Randazza Legal Group, PLLC
2764 Lake Sahara Drive, Suite 109
702-420-2001
efc@randazza.com

*Attorneys for Defendants STEPHEN
FAIRFAX and MTECHNOLOGY*

/s/ F. Christopher Austin
An employee of Weide & Miller, Ltd.

EXHIBIT 1

EXHIBIT 1

1 F. Christopher Austin, Esq.
Nevada Bar No. 6559
2 *caustin@weidemiller.com*
WEIDE & MILLER, LTD.
3 10655 Park Run Drive, Suite 100
Las Vegas, NV 89144
4 Tel: (702) 382-4804
Fax: (702) 382-4805

5 *Attorneys for Plaintiff Criminal Productions, Inc.*

6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 SWITCH, LTD. a Nevada limited liability
9 company,

10 Plaintiff,

11 vs.

12 STEPHEN FAIRFAX; MTECHNOLOGY;
13 and DOES 1 through 10; ROE ENTITIES
11 through 20, inclusive,

14 Defendants.

Case No.: 2:17-cv-02651-GMN-VCF

**DECLARATION OF F. CHRISTOPHER
AUSTIN IN SUPPORT PLAINTIFF'S
UNOPPOSED MOTION TO EXTEND TIME
TO FILE OPPOSITION TO DEFENDANTS'
MOTION FOR TEMPORARY STAY OF
DISCOVERY**

15 I, F. Christopher Austin, declare under penalty of perjury under the laws of the United
16 States that the following is true and correct:

17 1. I am counsel for Plaintiff, Switch, Ltd. ("Switch") in the above captioned matter.
18 I am over the age of 21, under no disability, and am competent to testify to the matters contained
19 in this declaration. I make this declaration in support of Plaintiff's Unopposed Motion for
20 Extension of Time to File Opposition to Defendants' Motion for Temporary Stay of Discovery
21 (ECF No. 22).

22 2. Defendants filed their Motion to Stay on May 15, 2018, making the opposition due
23 on May 29th. The deadline, however, was calendared by my firm one day later on the 30th due to
24 an error in not including Memorial Day in the calculation. As the attorney of record for this case,
25 I am personally responsible for this docketing entry and should have made sure the correct date
26 was entered or the error caught and corrected. However, I did not notice the error until it was
27 brought to my attention by opposing counsel, Ron Green.
28

1 3. I emailed Mr. Green on the 30th to request an extension to June 4, 2018, to file the
2 opposition to Defendants' Motion for a Temporary Stay (ECF No. 22), so that Switch's inhouse
3 counsel, who is out of state this week, could consult with me on the content of the opposition prior
4 to its filing. Mr. Green informed me that although our opposition was a day late, Defendants
5 would not oppose the requested extension. True and accurate copies of our email correspondence
6 is attached hereto as Exhibit 2.

7 4. I certify that this request is made in good faith and not with any intent to delay or
8 gain an advantage in this case.

9 DATED this 30th day of May, 2018.

10 /s/ F. Christopher Austin
11 F. Christopher Austin, Esq.

EXHIBIT 2

EXHIBIT 2

F. Christopher Austin

From: Ron Green <rdg@randazza.com>
Sent: Wednesday, May 30, 2018 1:54 PM
To: F. Christopher Austin
Cc: Marc Randazza; Trey Rothell; Tenny Fauver
Subject: Re: Switch v. Fairfax

Chris:

Because your request came after the due date for the Opposition, I felt I should run it by my client first. We will not oppose any request that you make to the Court for an extension of your deadline. Feel free to use this email as evidence that we met and conferred regarding the issue.

Thanks.

Ronald D. Green* | **Randazza Legal Group, PLLC**
2764 Lake Sahara Drive | Suite 109 | Las Vegas, NV 89117
Tel: 702-420-2001 | Email: rdg@randazza.com

* Licensed to practice law in Nevada.

On May 30, 2018, at 12:03 PM, F. Christopher Austin <caustin@weidemiller.com> wrote:

Ron:

Will you all agree to give Switch until Monday to file its opposition to your motion to stay?

Chris

F. Christopher Austin
Weide & Miller, Ltd.

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